

AMENDED IN SENATE MARCH 22, 2010

SENATE BILL

No. 1211

Introduced by Senators Romero and Dutton
(Coauthor: Assembly Member Hagman)

February 18, 2010

An act to amend Section 634.5 of the Unemployment Insurance Code, relating to unemployment insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1211, as amended, Romero. Unemployment insurance: benefits: eligibility: elected officials.

Existing law requires every employer, with specified exceptions, to pay contributions to the Unemployment Fund at specified rates, for the purpose of funding unemployment insurance benefits for eligible unemployed workers. Existing law defines "employment" for those purposes and, with respect to certain public entities, exempts from that definition certain services performed by an individual in the exercise of his or her duties as an elected official.

This bill would specify that ~~a state or local government~~ *an* elected official is prohibited from receiving unemployment compensation benefits under those provisions based on his or her income derived from employment as an elected official *and would deem an elected official to have constructive knowledge of this provision, as specified. The bill would require the Employment Development Department, by July 1, 2011, to adopt regulations to clarify that the above-described provision governing eligibility for unemployment compensation excludes elected officials from coverage under the unemployment insurance compensation system for purposes of benefit eligibility. The bill would also require the department to revise language in a specified California*

employment guide with regard to the exclusion of elected officials from unemployment insurance coverage and benefit eligibility, as specified.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 634.5 of the Unemployment Insurance
- 2 Code is amended to read:
- 3 634.5. Notwithstanding any other provision of law, no provision
- 4 excluding service from “employment” shall apply to any entity
- 5 defined by Section 605 or to any nonprofit organization described
- 6 by Section 608, except as provided by this section. With respect
- 7 to any entity defined by Section 605 or any nonprofit organization
- 8 described by Section 608, “employment” does not include service
- 9 excluded under Sections 629, 631, 635, and 639 to 648, inclusive,
- 10 or service performed in any of the following:
- 11 (a) In the employ of either of the following:
- 12 (1) A church or convention or association of churches.
- 13 (2) An organization which is operated primarily for religious
- 14 purposes and which is operated, supervised, controlled, or
- 15 principally supported by a church or convention or association of
- 16 churches.
- 17 (b) By a duly ordained, commissioned, or licensed minister of
- 18 a church in the exercise of his or her ministry or by a member of
- 19 a religious order in the exercise of duties required by the order.
- 20 (c) In the employ of any entity defined by Section 605, if the
- 21 service is performed by an individual in the exercise of his or her
- 22 duties as any of the following:
- 23 (1) An elected official. ~~A state or local government~~ *An elected*
- 24 *official is prohibited from receiving unemployment compensation*
- 25 *benefits under this chapter based on his or her; income derived*
- 26 *from employment as an elected official. An elected official is*
- 27 *deemed to have constructive knowledge of this section, establishing*
- 28 *a prima facie case of fraud, if that elected official collects*
- 29 *unemployment compensation benefits pursuant to this division.*
- 30 (2) A member of a legislative body or a member of the judiciary
- 31 of a state or a political subdivision of a state.

1 (3) A member of the tribal council of an Indian tribe as described
2 by subsection (u) of Section 3306 of Title 26 of the United States
3 Code.

4 (4) A member of a State National Guard or Air National Guard.

5 (5) An employee serving on a temporary basis in case of fire,
6 storm, snow, earthquake, flood, or other similar emergency.

7 (6) An employee in a position that, under or pursuant to state
8 or tribal law, is designated as either of the following:

9 (A) A major nontenured policymaking or advisory position.

10 (B) A policymaking or advisory position, the performance of
11 the duties of which ordinarily does not require more than eight
12 hours per week.

13 (7) (A) Except as otherwise provided in subparagraph (B), an
14 election official or election worker if the amount of remuneration
15 reasonably expected to be received by the individual during the
16 calendar year for services as an election official or election worker
17 is less than one thousand dollars (\$1,000).

18 (B) This paragraph shall not take effect unless and until the
19 service is excluded from service to which paragraph (1) of
20 subdivision (a) of Section 3309 of Title 26 of the United States
21 Code applies by reason of exemption under subdivision (b) of
22 Section 3309 of that act.

23 (d) By an individual receiving rehabilitation or remunerative
24 work in a facility conducted for the purpose of carrying out a
25 program of either:

26 (1) Rehabilitation for individuals whose earning capacity is
27 impaired by age or physical or mental deficiency or injury.

28 (2) Providing remunerative work for individuals who because
29 of their impaired physical or mental capacity cannot be readily
30 absorbed in the competitive labor market.

31 (e) By an individual receiving work relief or work training as
32 part of an unemployment work relief or work training program
33 assisted or financed in whole or in part by any of the following:

34 (1) A federal agency.

35 (2) An agency of a state or a political subdivision thereof.

36 (3) An Indian tribe, as described by subsection (u) of Section
37 3306 of Title 26 of the United States Code.

38 (f) By a ward or an inmate of a custodial or penal institution
39 pursuant to Article 1 (commencing with Section 2700), Article 4
40 (commencing with Section 2760), and Article 5 (commencing with

1 Section 2780) of Chapter 5 of, and Article 1 (commencing with
2 Section 2800) of Chapter 6 of, Title 1 of Part 3 of the Penal Code,
3 Section 4649 and Chapter 1 (commencing with Section 4951) of
4 Part 4 of Division 4 of the Public Resources Code, and Sections
5 883, 884, and 1768 of the Welfare and Institutions Code.

6 (g) By an individual under the age of 18 years in the delivery
7 or distribution of newspapers or shopping news, not including
8 delivery or distribution to any point for subsequent delivery or
9 distribution.

10 (h) By an individual in the sale of newspapers or magazines to
11 ultimate consumers, under an arrangement that includes the
12 following conditions:

13 (1) The newspapers or magazines are to be sold by the individual
14 at a fixed price.

15 (2) The individual's compensation is based on retention of the
16 excess of the price over the amount at which the newspapers or
17 magazines are charged to the individual, whether or not he or she
18 is guaranteed a minimum amount of compensation for the service
19 or is entitled to be credited with the unsold newspapers or
20 magazines that he or she returns.

21 (i) (1) Except as otherwise provided in paragraph (2), as a
22 substitute employee whose employment does not increase the size
23 of the employer's normal workforce, whose employment is
24 required by law, and whose employment as a substitute employee
25 does not occur on more than 60 days during the base period.

26 (2) This subdivision shall not take effect unless and until the
27 United States Secretary of Labor, or his or her designee, finds that
28 this subdivision is in conformity with federal requirements.

29 (j) As a participant in a national service program carried out
30 using assistance provided under Section 12571 of Title 42 of the
31 United States Code.

32 *SEC. 2. Not later than July 1, 2011, the Employment*
33 *Development Department shall adopt regulations to clarify that*
34 *paragraph (1) of subdivision (c) of Section 634.5 of the*
35 *Unemployment Insurance Code excludes elected officials from*
36 *coverage under the unemployment insurance compensation system*
37 *for purposes of benefit eligibility. The department shall also revise*
38 *current language in the California Employment Guide to state that*
39 *an elected official is not eligible to collect unemployment benefits*

- 1 *based on income earned from his or her service as an elected*
- 2 *official.*

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